Office - Supreme Court, U.S.
FILED
DEC 1 1982
ALEXANDER L. STEVAS,
CLERK

No. 82-462

In the Supreme Court of the United States

OCTOBER TERM, 1982

INSURANCE AND PREPAID BENEFITS TRUST, ETC., PETITIONERS

v.

RAYMOND J. DONOVAN, SECRETARY OF LABOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

REX E. LEE
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

T. TIMOTHY RYAN, JR.
Solicitor of Labor

KAREN I. WARD
Associate Solicitor

ALLEN H. FELDMAN
Counsel for Appellate Litigation

Department of Labor
Washington, D.C. 20210

QUESTION PRESENTED

Whether the district court properly declined to issue a writ of mandamus ordering the Secretary of Labor to declare that petitioners qualify as an "employee welfare benefit plan" within the meaning of Section 3(1) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1002(1).

TABLE OF CONTENTS

Page

Opinions below 1

Jurisdiction 1

Statement 1

Argument 4

Conclusion 6

TABLE OF AUTHORITIES

Cases:

Hewlett-Packard Co. v. *Barnes*, 571 F. 2d 502, cert. denied, 439 U.S. 831 6

Panama Canal Co. v. *Grace Line, Inc.*, 356 U.S. 309 5

Schilling v. *Rogers*, 363 U.S. 666 5

Wilbur v. *United States ex rel. Kadrie*, 281 U.S. 206 5

Work v. *United States ex rel. Rives*, 267 U.S. 175 ..... 4, 5

Statutes:

Declaratory Judgment Act, 28 U.S.C. 2201 5

Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 *et seq.* 2

29 U.S.C. 1002(1) 2, 3, 4

29 U.S.C. 1002(5) 2, 3

28 U.S.C. 1361 ..... 3, 5

In the Supreme Court of the United States

OCTOBER TERM, 1982

No. 82-462

INSURANCE AND PREPAID BENEFITS TRUST, ETC., PETITIONERS

v.

RAYMOND J. DONOVAN, SECRETARY OF LABOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 11-12) is reported at 685 F. 2d 443 (table). The opinion of the district court (Pet. App. 2-10) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on July 15, 1982. A petition for rehearing was denied on August 11, 1982 (Pet. App. 13). The petition for a writ of certiorari was filed on September 17, 1982. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. In November 1975, petitioners, a group health insurance trust arrangement for the benefit of multiple employers, were formed by Thomas Wilkie, who served as trustee (Pet. App. 2). The trust was established pursuant to state law, which required that it be formed as a condition to the

issuance of a group insurance policy. The group insurance policy was sold to petitioners by Insurance Benefits, Inc. (IBI), a company wholly owned by Mr. Wilkie (*ibid.*).

In 1977, the original trust document was redrafted and the single trust was divided into five successor trusts established by five separate trust agreements. The new trust documents provided for a Benefit Committee composed of representatives of the "participating employers" to supervise the operation of the trusts. By contract, however, IBI was retained as administrator of the trusts (Pet. App. 2-3).

Petitioners sought a declaration from the Department of Labor that their trust arrangement for providing group health insurance was an "employee welfare benefit plan" within the meaning of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 *et seq.* (Pet. App. 11).[1] On July 23, 1979, the Department of Labor informed petitioners by letter that it had concluded that the trust "does not, as an entity, constitute an employee welfare benefit plan." The letter stated (Pet. 3; C.A. App. 17-18) that it was the Department's view that

---

[1] 29 U.S.C. 1002(1) provides in pertinent part:

> The terms "employee welfare benefit plan" and "welfare plan" mean any plan, fund, or program which * * * is * * * maintained by an employer * * * to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits * * *.

29 U.S.C. 1002(5) defines an "employer" as follows:

> [A]ny person acting directly as an employer, or indirectly in the interest of an employer, in relation to an employee benefit plan; and includes a group or association of employers acting for an employer in such capacity.

> where several unrelated employers, in establishing benefit programs for their unrelated employees, without any concerted "sponsor" or "settlor" activity, merely execute identically worded "trust agreements," "subscription agreements," or similar documents offered by an independent third party as a means to fund benefits, no multiple employer plan can be recognized.

Since the trusts involved unrelated businesses, the Department found that each employer has its own separate plan and advised petitioners that they did not qualify as a multiple employer plan subject to ERISA (C.A. App. 18).

2. On August 10, 1979, petitioners filed suit against the Secretary of Labor in the United States District Court for the Central District of California, seeking a writ of mandamus under 28 U.S.C. 1361, ordering the Department to recognize the trust as a plan covered by ERISA (Pet. App. 11).[2] After trial, the district court concluded that petitioners were not an employee benefit plan falling within the scope of ERISA (*ibid.*). This determination rested on grounds different from those cited by the Department in its letter. Unlike the Department, the district court concluded that the employers participating in the trust did constitute an "employer" within the meaning of 29 U.S.C. 1002(1) and 1002(5) (Pet. App. 6). The court was unable to conclude, however, that the power to make final decisions for the trust rested with the Benefit Committee, because under the trust agreement IBI retained substantial authority, and Mr. Wilkie, the owner of IBI, was chairperson of the Benefit Committee (Pet. App. 7-8). The court therefore agreed with the Department's ultimate conclusion that the trust "was not a plan 'established or maintained' *by an employer*" within the

---

[2]The complaint also requested a declaratory judgment that the trust arrangement is an employee benefit plan under ERISA (Pet. App. 11).

meaning of 29 U.S.C. 1002(1), but was instead established and maintained by Mr. Wilkie (Pet. App. 6-8; emphasis in original). The court also concluded that the trust was not established and maintained "for its participants or their beneficiaries," as required by 29 U.S.C. 1002(1), because the trust documents permitted inclusion of individuals who are not eligible for plan participation under ERISA (Pet. App. 7-10). Accordingly, the district court dismissed the complaint, thereby denying the petition for a writ of mandamus.

The court of appeals affirmed (Pet. App. 11-12). The court of appeals held that in this case "[t]he Department of Labor exercised its discretion when it issued its opinion letter" (*id.* at 12). Stating that "[m]andamus is not available * * * unless the act to be compelled is mandatory or ministerial," the court of appeals "agree[d] with the district court that mandamus should be denied" (*ibid.*).[3]

ARGUMENT

1. Petitioners contend (Pet. 6-7) that, even though the Secretary had discretion not to issue an opinion letter, he nevertheless had a "mandatory duty" in doing so "to correctly interpret the law." This contention is wholly without merit.

As this Court stated in *Work* v. *United States ex rel. Rives*, 267 U.S. 175, 177 (1925), where "discretion extends to a final construction by the officer of the statute he is executing * * * [n]o court * * * can control by mandamus

---

[3]The court also "agree[d] with the district court's finding that the power to make final decisions rested in IBI rather than in [the trust]" (Pet. App. 12). Because of the "limited scope of review of a denial of mandamus," the court of appeals concluded that "[t]he other issues raised on appeal are not properly before us" (*ibid.*).

his interpretation, even if it may think it erroneous."[4] Similarly, in *Wilbur* v. *United States ex rel. Kadrie*, 281 U.S. 206, 218 (1930), the Court noted that mandamus may not be employed "to direct the exercise of judgment or discretion in a particular way nor to direct the retraction or reversal of action already taken in the exercise of either." See also *Panama Canal Co.* v. *Grace Line, Inc.*, 356 U.S. 309, 318-319 (1958). Since the Department in exercising its discretion whether to issue an opinion letter did no more than interpret somewhat ambiguous statutory terms with respect to the particular facts of petitioners' plan, the court of appeals correctly concluded that the district court lacked authority under 28 U.S.C. 1361 to order the Secretary to declare that petitioners are an "employee welfare benefit plan." This decision affects no one except petitioners and obviously does not warrant review by this Court.[5]

---

[4]The Court has recognized that mandamus is available where an officer is not simply exercising discretion but is acting beyond his authority. See *Work* v. *United States ex rel. Rives*, *supra*, 267 U.S. at 177. Petitioners make no such allegation here.

[5]The disagreement between the district court and the Department of Labor over the reasons to deny ERISA status to petitioners does not, as petitioners imply (Pet. 4-5), constitute grounds for further review. Petitioners filed an original action in the district court and thus the court was not reviewing the validity of the Department's opinion letter. Therefore, the fact that the Department of Labor and the district court reached the same conclusion, but for different reasons, is of no legal significance. Moreover, the court of appeals expressly and properly declined to address these differences, viewing such questions as not properly before it. See note 3, *supra*. See also *Schilling* v. *Rogers*, 363 U.S. 666, 667 (1960) (the Declaratory Judgment Act, 28 U.S.C. 2201, does not confer an independent source of jurisdiction, but presupposes the existence of a judicially remediable right).

Nor is petitioners' claim advanced by their assertion (Pet. 7) that the State of California may conclude that the trust is subject to ERISA and thus not within the State's power to regulate. Petitioners' unfounded fears about what the State may do in the future cannot affect the discretionary nature of the Secretary's decision. Moreover, we note that

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

REX E. LEE
Solicitor General

T. TIMOTHY RYAN, JR.
Solicitor of Labor

KAREN I. WARD
Associate Solicitor

ALLEN H. FELDMAN
Counsel for Appellate Litigation
Department of Labor

DECEMBER 1982

---

the issue of whether petitioners' plan is subject to state regulation may provide them with an opportunity to litigate the scope of ERISA coverage. If the State imposes any requirements more onerous than those in ERISA, petitioners may be able to seek a judicial declaration regarding preemption based on their claims that they should be federally regulated. See generally *Hewlett-Packard Co.* v. *Barnes*, 571 F. 2d 502 (9th Cir.), cert. denied, 439 U.S. 831 (1978).

DOJ-1982-12